

RESPONSE UNDER 37 C.F.R. § 1.116
U.S. Application No.: 10/784,966
Attorney Docket No.: Q80094

The Examiner's detailed statement of this rejection is identical to the Examiner's previous rejection set forth in the Office Action of September 27, 2005.

At page 4 of the present Office Action, the Examiner responds to the arguments that applicant submitted in the Amendment under 37 C.F.R. § 1.111 filed on December 20, 2005.

In essence, the Examiner maintains that Hsu discloses the claimed ranges because the claimed ranges overlap with ranges that are set forth in Hsu. The Examiner refers to the MPEP § 2131.03.

In addition, the Examiner asserts that Hsu specifically discloses that the preferred total thickness of the electron transporting layer and light emitting layer is in the range of 30nm to 160nm.

The Examiner asserts that this preferred total thickness range in Hsu overlaps the claimed range.

In addition, with respect to the PANI layer and its thickness, the Examiner states that he has not considered the PANI layer because the present claims only call for a total thickness of electron transport layer and the light emitting layer.

With respect to the thickness of the electron transporting layer, the Examiner argues that Hsu discloses a range of 20nm to 80nm, whereas the claimed range is “60nm or less”. The Examiner obviously made a mistake here, because the claimed range for the electron transporting layer is 60nm or more.

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The Examiner asserts that the Hsu range overlaps the claimed range and thus anticipates the claimed range, since Hsu “discloses the range 20nm to 60nm with sufficient specificity”.

Applicant disagrees with the Examiner’s analysis.

Applicant submits that the Examiner’s position is contrary to the law as set forth in the recently decided case of *Atofina v. Great Lakes Chemical Corporation*, 78 USPQ2d 1417 (Fed. Cir. 2006).

In *Atofina*, the Federal Circuit made it clear that a prior art temperature range of 100° to 500°C, which is broader than and fully encompasses a specific claimed temperature range of 330° to 450°C, does not anticipate the claimed 330° to 450°C recitation, because it does not describe the claimed range with sufficient specificity.

In addition, the Federal Circuit held that a prior art preferred temperature range of 150° to 350°C that slightly overlaps the claimed range of 330° to 450°C does not anticipate the claimed range, because the slightly overlapping range is not disclosed as being a species of the claimed range of 330 to 450°C.

Further, the Federal Circuit held that the prior art disclosure of a range of 150° to 350°C does not constitute a specific disclosure of the end points of that range, that is, 150°C and 350°C. The disclosure of a range of 150° to 350°C is a disclosure only of that range, and not a specific temperature in that range, and the disclosure of a range is no more a disclosure of the end points of the range than it is of each of the intermediate points. Accordingly, the prior art did not disclose a specific embodiment of the claimed temperature range.

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Similarly, with respect to molar ratios, the Federal Circuit held that a disclosure in the prior art of a ratio of 0.001 to 1%, which overlaps but does not fall within the claimed ratio of 0.1 to 5.0%, is not an anticipation of the ratio of 0.1 to 5.0%. The court found that although there is a slight overlap, one could not determine that this overlap described the entire claimed range with sufficient specificity to anticipate the claimed limitation. The court held that the ranges are different and not the same.

Based on these principles, applicant submits that it is clear that the disclosures in Hsu do not anticipate the present claims.

Moreover, the Examiner in the present case has created synthetic ranges from the disclosures of Hsu. Thus, although the Examiner states that Hsu specifically discloses a preferred total thickness of electron transporting layer and light emitting layer of 30nm to 160nm, these numbers nowhere appear in Hsu. They were created by the Examiner. Thus, there is clearly no specific disclosure of the 30 to 160nm range of the present application.

Further, with respect to the PANI layer, applicant submits that the Examiner is incorrect that the present claims only call for a total thickness of the electron transport layer and the light emitting layer. The present claims recite both the thickness of the electron transporting layer and the total thickness of the electron transporting and light emitting layer. When both of these requirements are considered, applicant submits that it is clear that the PANI layer in Hsu cannot be ignored, since it is an electron transporting layer.

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The MPEP, at 2131.03, states that in order to anticipate the claims, the claimed subject matter must be disclosed in a reference with “sufficient specificity to constitute an anticipation under the statute.” What constitutes a sufficient specificity is fact-dependent.

If the claims are directed to a narrow range, and the reference teaches a broader range and there is evidence of unexpected results within the claimed narrow range, depending on the facts of the case, it may be reasonable to conclude that the narrow range is not disclosed with sufficient specificity to constitute an anticipation of the claims.

In the present case, applicant has argued that the data in Table 1 shows unexpected results for the claimed ranges. These unexpected results support a conclusion that the claimed range is not disclosed with sufficient specificity to constitute an anticipation of the claims.

In view of the above, applicant submits that Hsu does not anticipate the present claims and, accordingly, request withdrawal of this rejection.

Claims 12 and 13 have been rejected under 35 U.S.C. § 103(a) as obvious over Hsu and further in view of Fukuda.

This rejection is identical to the rejection in the previous Office Action of September 27, 2005.

Claims 12 and 13 are dependent claims. Accordingly, they are patentable for the same reasons as discussed above.

In view of the above, applicant requests withdrawal of this rejection.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the

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Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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